



# United States Department of the Interior

NATIONAL PARK SERVICE

1849 C Street, N.W.  
Washington, DC 20240

DEC 15 2015

The Honorable Rob Bishop  
Chairman, Committee on Natural Resources  
House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

Section 3057 of P.L. 113-291, the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015, requires the Secretary of the Interior to take the following actions at Cape Hatteras National Seashore: 1) review and modify wildlife buffers and designate pedestrian and vehicle corridors; 2) undertake a public process to consider modifications to the 2012 Final Rule pertaining to off-road vehicle use; 3) expedite construction of new vehicle access points. The Act also requires the Secretary of the Interior to report to Congress within one year of December 19, 2014, on measures taken to implement these actions.

The enclosed report, prepared by the National Park Service, provides this information. If you have any questions regarding this report, please contact Cape Hatteras National Seashore Superintendent Dave Hallac, at (252) 475-9032. We appreciate your interest in the successful implementation of Section 3057 of P.L. 113-291, and look forward to working closely with you and other members of Congress on this and other matters at Cape Hatteras National Seashore.

Thank you for providing us with the opportunity to share this report. A similar letter has been sent to Senate Energy and Natural Resources Chairman Lisa Murkowski and Ranking Minority Member Maria Cantwell, and to House Committee on Natural Resources Ranking Minority Member Raúl Grijalva.

Sincerely,

Jonathan B. Jarvis  
Director

Enclosure

cc: The Honorable Walter Jones  
The Honorable Richard Burr  
The Honorable Thom Tillis



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The Honorable Raúl Grijalva  
Ranking Member,  
Committee on Natural Resources  
House of Representatives  
Washington, D.C. 20515

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The Honorable Lisa Murkowski  
Chairman,  
Committee on Energy  
and Natural Resources  
United States Senate  
Washington, D.C. 20510

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The Honorable Maria Cantwell  
Ranking Member,  
Committee on Energy  
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United States Senate  
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Dear Senator Cantwell

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Sincerely,

Jonathan B. Jarvis  
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Enclosure

cc: The Honorable Walter Jones  
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The Honorable Thom Tillis

## **Report to Congress**

Implementation of Section 3057, Cape Hatteras National Seashore Recreational Area, of P.L. 113-291, the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015.

December, 2015

**Prepared by:** The National Park Service

**Contact:** David Hallac, Superintendent, Cape Hatteras National Seashore,  
David\_Hallac@nps.gov, 252-475-9032

## **Executive Summary**

On December 19, 2014, Congress passed P.L 113-291, the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (NDAA). Section 3057 of the Act directed the Secretary of the Interior to take the following actions at Cape Hatteras National Seashore (Seashore): 1) review and modify wildlife buffers and designate pedestrian and vehicle corridors; 2) undertake a public process to consider modifications to the 2012 Final Rule pertaining to off-road vehicle use; 3) expedite construction of new vehicle access points; and, 4) report to Congress within one year of the enactment of the NDAA.

The Secretary has completed or made substantial progress towards completing these tasks. In close coordination with the North Carolina Wildlife Resources Commission, a review and modification of wildlife buffers was finalized on June 16, 2015, within 180 days as required by the NDAA. This review, which included an opportunity for public input, resulted in modified wildlife buffers for several beach nesting species and provided corridors for pedestrians and off-road vehicles.

A public process is underway to consider modifications to the Final Rule. Public scoping meetings were held in August 2015 and the Seashore has prepared a draft Environmental Assessment, scheduled for public release and review in January 2016. The Environmental Assessment includes alternatives to: a) consider opening beaches to off-road vehicles earlier in the morning; b) extend the seasons for seasonal off-road vehicle routes; and c) modify the size and locations of vehicle-free areas.

The Seashore expedited the construction of all off-road vehicle access projects that were previously planned for implementation. On Hatteras Island, ramps 25, 32, and 48 were constructed and opened for public use. On Ocracoke Island, ramp 63, and on Hatteras Island, the Frisco-to-Cape Point 4-mile long “inside road”, are under construction and scheduled for completion during winter 2015/2016, several years ahead of the initial construction schedule.

**P.L. 113-291, SEC. 3057. CAPE HATTERAS NATIONAL SEASHORE RECREATIONAL AREA.**

(a) **DEFINITIONS.**—*In this section:*

(1) **FINAL RULE.**—*The term “Final Rule” means the final rule entitled “Special Regulations, Areas of the National Park System, Cape Hatteras National Seashore—Off-Road Vehicle Management” (77 Fed. Reg. 3123 (January 23, 2012)).*

(2) **NATIONAL SEASHORE.**—*The term “National Seashore” means the Cape Hatteras National Seashore Recreational Area.*

(3) **SECRETARY.**—*The term “Secretary” means the Secretary of the Interior.*

(4) **STATE.**—*The term “State” means the State of North Carolina.*

(b) **REVIEW AND ADJUSTMENT OF WILDLIFE PROTECTION BUFFERS.**—

(1) **IN GENERAL.**—*Not later than 180 days after the date of enactment of this Act, the Secretary shall review and modify wildlife buffers in the National Seashore in accordance with this subsection and any other applicable law.*

(2) **BUFFER MODIFICATIONS.**—*In modifying wildlife buffers under paragraph (1), the Secretary shall, using adaptive management practices—*

(A) *Ensure that the buffers are of the shortest duration and cover the smallest area necessary to protect a species, as determined in accordance with peer-reviewed scientific data; and*

(B) *Designate pedestrian and vehicle corridors around areas of the National Seashore closed because of wildlife buffers, to allow access to areas that are open.*

(3) **COORDINATION WITH STATE.**—*The Secretary, after coordinating with the State, shall determine appropriate buffer protection s for species that are not listed under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), but that are identified for protection under State law.*

(c) **MODIFICATIONS TO FINAL RULE:** *The Secretary shall undertake a public process to consider, consistent with management requirements at the National Seashore, the following changes to the Final Rule:*

(1) *Opening beaches at the National Seashore that are closed to night driving restrictions, by opening beach segments each morning on a rolling basis as daily management reviews are completed.*

(2) *Extending seasonal off-road vehicle routes for additional periods in the Fall and Spring if off-road vehicle use would not create resource management problems at the National Sea- shore.*

(3) *Modifying the size and location of vehicle-free areas.*

(d) **Construction of New Vehicle Access Points:** *The Secretary shall construct new vehicle access points and roads at the National Seashore—*

(1) *as expeditiously as practicable; and*

(2) *in accordance with applicable management plans for the National Seashore.*

(e) **REPORT.**—*The Secretary shall report to Congress within 1 year after the date of enactment of this Act on measures taken to implement this section.*

This Report to Congress details the Secretary of the Interior's progress implementing Section 3057, Cape Hatteras National Seashore Recreation Area, of P.L. 113-291, the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 (NDAA).

### **Summary of P.L. 113-291, Subsection 3057 (b)**

Subsection 3057 (b) directs the Secretary of the Interior to review and modify wildlife buffers in Cape Hatteras National Seashore within 180 days of enactment of P.L. 113-291. The subsection requires that the Secretary, in modifying these wildlife buffers, use adaptive management strategies to: ensure that the wildlife buffers are of the shortest possible duration and cover the smallest possible area necessary to protect a species, as determined by peer reviewed scientific data; and, designate pedestrian and vehicle corridors around areas closed because of wildlife buffers, to allow access to areas that are open.

Finally, subsection 3057 (b) requires the Secretary, after coordinating with the State of North Carolina, to determine appropriate buffer protections for species that are not listed under the Endangered Species Act, but are identified for protection under State law.

### **National Park Service Implementation of P.L. 113-291, Subsection 3057 (b)**

The Seashore, in coordination with the State of North Carolina's Wildlife Resources Commission (NCWRC) and the United States Fish and Wildlife Service (FWS), began an Environmental Assessment (EA) during January 2015, to ensure that wildlife protection buffers were of the shortest duration and smallest area necessary to protect beach nesting species, using the best available science (Cape Hatteras National Seashore 2015a). Wildlife protection buffers were previously developed as part of an Off-Road Vehicle Management Plan/Environmental Impact Statement in 2010 (Cape Hatteras National Seashore 2010). The EA includes new management protocols for the implementation of pedestrian and vehicle corridors, where possible.

In May 2015, the EA was released for public review and public meetings were held in Ocracoke, Buxton, Kitty Hawk, and Raleigh, N.C., and Hampton, VA. Approximately 9,300 pieces of correspondence were received, the majority of which supported the no-action alternative, *i.e.*, not modifying wildlife protection buffers.

On June 16, 2015, the National Park Service (NPS) issued a Finding of No Significant Impact (FONSI) that modified wildlife protection buffers for piping plovers, American oystercatchers, least terns, other colonial nesting waterbirds, and sea turtles (Cape Hatteras National Seashore 2015b). The FONSI also described corridor protocols that were developed for piping plovers, American oystercatcher nests, and sea turtle nests. Partial implementation of the modified wildlife buffers and corridors occurred for sea turtle nests during summer 2015.

The Seashore determined that approximately 13 additional seasonal staff members are required to implement the modified buffers and corridors, while maintaining adequate protection for wildlife. Additional staff will be hired to allow full plan implementation beginning summer 2016.

### **Summary of P.L. 113-291, Subsection 3057 (c)**

Subsection (c) directs the Secretary of the Interior to undertake a public process to consider changes to the Final Rule (77 Federal Register 3123) that would: open segments of beaches closed to night driving on a rolling basis; extend seasonal off-road vehicle routes for additional periods in the Fall and Spring; extend seasonal off-road vehicle routes for additional periods in the Fall and Spring; and, modify the size and location of vehicle-free areas.

### **National Park Service Implementation of P.L. 113-291, Subsection 3057 (c)**

The Seashore, in collaboration with the NCWRC and FWS, initiated an EA process to consider modifications to the Final Rule (2012) during the summer of 2015. Public scoping meetings were held during August 2015 in Ocracoke, Buxton, Kitty Hawk, and Raleigh, N.C. and Hampton, V.A. Approximately 1,800 pieces of correspondence were received. The majority of comments on morning beach openings requested that beaches be opened earlier than under the Final Rule. The majority of comments on the potential to extend seasonal off-road vehicle routes in fall and spring opposed any extensions. The majority of comments on modifying the size and location of vehicle-free areas supported either increasing the size and number of locations of vehicle-free areas or no change. Many comments requesting changes to the final rule included detailed recommendations.

The Seashore has thoroughly reviewed the comments and recommendations and has sought input from the NCWRC and FWS. Information obtained through public and agency scoping is being used to prepare the EA, including a range of alternatives for proposed modification of the Final Rule. The EA is scheduled to be released for public review in January 2016 and the NPS anticipates selecting an alternative and releasing a decision document in the summer of 2016. Implementation of an action alternative will require that the Seashore engage in a rule-making process to make changes to the Final Rule, which may take an additional 12 months after release of a decision document.

### **Summary of P.L. 113-291, Subsection 3057 (d)**

Subsection (d) requires that the Secretary of the Interior, as expeditiously as possible, construct new vehicle access points and roads at Cape Hatteras National Seashore in accordance with applicable management plans.

### **National Park Service Implementation of P.L. 113-291, Subsection 3057 (d)**

In 2013, the Seashore prepared a plan to construct 29 vehicle and pedestrian access projects and parking areas (Cape Hatteras National Seashore 2013). Ramps allow off-road vehicles to access the beach from paved roads.

At the time the NDAA was passed, the construction of Ramp 25 was underway on Hatteras Island and construction of Ramps 32, 48, 63, and the 4-mile long Inside Road had not begun. The initial schedule described the completion of those remaining ramps and the Inside Road between 2018 and 2019.

As a result of the NDAA, the Seashore re-prioritized the implementation of projects and developed a strategy to expedite the construction of the remaining access projects. Ramps 25, 32, and 48 on Hatteras Island were completed between January and December 2015. Ramp 63 (Ocracoke Island) and the Inside Road (Hatteras Island) are under construction and expected to be opened to the public during the winter of 2015/2016. Construction of one additional ramp, located at mile marker 59.5 on Ocracoke Island, has been postponed until the EA considering modifications to the Final Rule is completed. Potential changes to the Final Rule may make the construction of ramp 59.5 unnecessary.

## References

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